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November 25, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 22, 2009

Case Number: TSO-0793

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ For the reasons set forth below, I conclude that the individual should be granted a security clearance.²

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor, who requested a security clearance on his behalf. In response to this request, the Local Security Office (LSO) conducted an investigation of the individual. In June 2008, during this investigation, the individual was arrested for under-aged possession and consumption of alcohol. Upon learning of this arrest, the Local Security Office (LSO) summoned the individual for an interview with a personnel security specialist. After this December 2008 Personnel Security Interview (PSI) failed to resolve the security concerns that were raised by the arrest, the LSO referred the individual to a local psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. The DOE psychiatrist prepared a written report, which set forth the results of that evaluation, and sent it to the LSO. After reviewing this report and the rest of the individual's personnel security file, the LSO determined that derogatory information existed that cast into doubt the individual's eligibility for access authorization. They informed the individual of this determination in a letter that set forth the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

² Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

The individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals, and I was appointed the Hearing Officer. The DOE introduced eight exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist. The individual introduced seven exhibits, and presented the testimony of eight witnesses in addition to testifying himself.

II. DEROGATORY INFORMATION AND THE ASSOCIATED SECURITY CONCERNS

A. The Individual's Alcohol Usage and Related Events

The following information was obtained from the DOE psychiatrist's report (DOE Exhibit (DOE Ex.) 3). The individual first consumed alcohol during the second semester of his senior year in high school, in 2006. On that occasion, he drank three or four 12-ounce beers over a period of four to five hours at a party, and reported feeling "drunk." DOE Ex. 3 at 7. He defined "intoxicated" as being analogous with "drunk," *i.e.*, as being "disinhibited" in his actions, with slightly slurred speech and decreased coordination. *Id.* It would take him four to five beers to reach this state. During the remainder of his time in high school, he would consume no more than two beers on an average of once per month.

When he entered college, both the frequency and the amounts of his alcohol consumption increased. He began consuming alcohol (mostly beer) on an average of twice per month, and would drink anywhere from two to six beers, "depending on the circumstances." *Id.* He would drink to intoxication approximately once every four to five weeks.

In September 2006, the individual was cited for being a minor in possession of alcohol. He was observed by campus police having difficulty inserting a key into a lock at a college residence hall. According to the police report, his breath smelled of alcohol, and he had slurred speech, difficulty understanding simple commands, and difficulty maintaining his balance. In April 2008, the individual was first interviewed by a personnel security specialist concerning issues related to his eligibility for access authorization, including this 2006 citation. During the PSI, the interviewer raised the issue of the individual's under-aged usage of alcohol, and set forth the DOE's security concerns regarding excessive alcohol use. Approximately two months after the interview, the individual was arrested for under-aged possession and use of alcohol. He and a friend were in the downtown area of the city in which he resides at approximately 2 a.m., waiting for some young women leave a local bar. Because they were showing signs of intoxication, they were arrested by the local police. The individual had had four or five beers at his friend's house earlier that evening, and he admitted that he was "buzzed." *Id.* at 9.

As part of a plea agreement resulting from this arrest, the individual attended an alcohol education class. During this class, the consequences and effects of alcohol on the users' health, judgement, and driving ability were discussed. After this class and after the individual's second PSI in December 2008, he decided to refrain from further drinking until after his 21st birthday.

B. The Notification Letter and the DOE's Security Concerns

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information, most of which is set forth above, pertains to paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Criterion (j) defines as derogatory information indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependant or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). As support for this criterion, the Letter cites the finding of the DOE psychiatrist that the individual is a user of alcohol habitually to excess, the individual's alcohol-related citation and arrest, and his abusive levels of alcohol consumption between 2006 and 2008.

This derogatory information adequately justifies the DOE's invocation of criterion (j), and raises significant security concerns. Excessive alcohol consumption such as that exhibited by the individual often leads to the exercise of questionable judgement or the failure to control impulses, and can therefore raise questions about an individual's reliability and trustworthiness. *See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information, The White House (December 19, 2005), Guideline G.*

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual's eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

At the hearing, the individual challenged, primarily through the testimony of a local psychiatrist (hereinafter referred to as “the individual’s psychiatrist”), the DOE psychiatrist’s finding that he is a user of alcohol habitually to excess. In the alternative, the individual attempted to demonstrate that he has permanently altered his abusive pattern of alcohol consumption, and no longer represents an unacceptable security risk. For the reasons set forth below, I agree with the DOE psychiatrist that, as of the date of her March 2009 report, the individual was a user of alcohol habitually to excess. However, I conclude that the individual has demonstrated adequate evidence of reformation, and that his alcohol usage no longer represents a valid security concern.

A. The Individual Was a User of Alcohol Habitually to Excess

The phrase “user of alcohol habitually to excess” is not set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision as a formal psychiatric diagnosis, nor is it defined in the Part 710 regulations. However, OHA Hearing Officers have addressed the application of this phrase in numerous Decisions, and have defined it as properly applying to individuals who drink to intoxication as a customary practice or pattern. *See, e.g., Personnel Security Hearing*, Case No. TSO-0738 (2009); *Personnel Security Hearing*, Case No. TSO-0453 (2007).

The individual’s psychiatrist testified at the hearing that, although the individual periodically drank to excess in the past, he never did so with sufficient frequency for this behavior to be considered “habitual.” Hearing Transcript (Tr.) at 127. The individual testified that, from September 2006 through December 2008, he drank to intoxication “once to one-and-a-half times a month.” Tr. at 117.

This pattern of drinking falls comfortably within the range of consumption that OHA Hearing Officers have found to constitute habitual use to excess. *See, e.g., Personnel Security Hearing*, Case No. VSO-0569 (2002) (drinking to intoxication once per month found to be habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0086 (2004) (drinking to intoxication three times per week found to be habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0393 (2006) (binge drinking all night on weekends once every two or three months found to constitute habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0453 (2007) (drinking to intoxication once or twice per month found to be habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0424 (2006) (intoxication 12 times per year between 1994 and 1998, 12 times in 2001, 18 times total in 2002 and 2003, 12 times in 2004 and 10 times in 2005 found to constitute habitual use to excess); *Personnel Security Hearing*, Case No. TSO-0738 (2009) (intoxication twice per month between 1998 and 2002 and every night between 2002 and 2007 found to be habitual use to excess). The record in this matter indicates that the individual drank to intoxication as a customary practice or pattern from September 2006 through December 2008. Consequently, I agree with the DOE psychiatrist that the individual was a user of alcohol habitually to excess as of the date of the DOE psychiatrist’s report.

B. The Individual Has Altered His Abusive Pattern of Alcohol Consumption

At the hearing, the individual testified that after his December 2008 PSI, he refrained from further alcohol consumption until his 21st birthday, a period of approximately four months. Tr. at 103-104. Since then, he has consumed one drink on an average of once every month-and-a-half to two months. The individual's testimony in this regard is supported by that of his father (Tr. at 35-36), his mother (Tr. at 41-42, 44), his step-mother (Tr. at 49), his fraternity "brother" (Tr. at 78), and his friend (Tr. at 87).

The individual added that his decision to stop the under-aged consumption of alcohol, and, after his 21st birthday, to drink responsibly, was influenced by his experiences after the June 2008 arrest. As an initial matter, the individual described his fifteen-to-twenty hours of jail time after the arrest as "scary." He explained that he "was in there with a rough crowd," and that he couldn't sleep for fear over his physical safety. He concluded that his jailing made "a big impact." Tr. at 111. The court-mandated alcohol education class that the individual participated in after his arrest also made a significant impression. As part of that class, was shown the possible consequences of excessive alcohol use during a visit to a local hospital, where he also "saw [the hospital's] morgue, smelled the morgue, and, basically . . . I just really put in my mind what was more important to me [than drinking], my future. Tr. at 112. The individual further explained that the interviewer during the December 2008 PSI emphasized, in a way that the interviewer during the April 2008 PSI did not, the importance of refraining from under-aged drinking. Tr. at 108, 113. As for his future alcohol use, the individual stated his intention to limit himself to one drink on those occasions that he chooses to consume alcohol. Tr. at 118.

I also found it significant that both of the expert witnesses who testified at the hearing concluded that the individual was demonstrating adequate evidence of reformation from his habitual use of alcohol to excess. The DOE psychiatrist concluded in her report that, in order to show adequate evidence of reformation or rehabilitation, the individual would have to refrain from drinking to intoxication for six months, and avoid any further alcohol-related legal problems for one year. As of the date of the hearing, the record in this matter indicates that the individual had refrained from drinking to intoxication for approximately nine months, and had avoided any alcohol-related legal issues since his June 2008 arrest, a period of approximately 15 months. Accordingly, the DOE psychiatrist testified that the individual was demonstrating adequate evidence of rehabilitation. Tr. at 152. As set forth above, the individual's psychiatrist took the position that the individual was not a user of alcohol habitually to excess. However, he testified that, even if the individual was such a user, he was demonstrating adequate evidence of reformation. He found the DOE psychiatrist's criteria to be reasonable, and he concluded that the individual had satisfied them. Tr. at 129.

I agree with the DOE psychiatrist and the individual's psychiatrist that the individual is demonstrating adequate evidence of reformation. I believe that the June 2008 arrest and subsequent events had a profound effect on the individual, and made him realize that, if he wished to perform work requiring a security clearance, he could no longer engage in a pattern of excessive alcohol use. Given his relatively brief period of excessive use, his age at the time of that use, and the positive testimony of his friends and family concerning his current level of maturity and responsibility, I find that the individual's nine months of responsible use and 15 months of avoiding alcohol-related legal problems constitute adequate evidence of reformation.

V. CONCLUSION

Based on my careful consideration of all the evidence in the record as outlined above, I conclude that the individual has demonstrated that granting him access authorization would not endanger the common defense and security, and would be clearly consistent with the national interest. Accordingly, I find that the individual should be granted a security clearance. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Senior Hearing Officer
Office of Hearings and Appeals

Date: **November 25, 2009**